

REMARKS

The Office Action of September 18, 2006, has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested. Claims 1-4, 6-9, 13, 18-20, 26-34, 39, 40, and 45-50 have been amended. Claims 1-4, 6-13, 15-21, 23-34, 39-40, and 45-50 remain pending upon entry of the present amendment.

Rejections Under 35 U.S.C. § 103

Claims 1-4, 6-7, 9-13, 15-16, 18-21, 23-24, 26-34, 39-40, and 45-50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,728, 531 to Lee et al. (hereinafter referred to as “Lee”) in view of U.S. Patent No. 6,681,115 to McKenna et al. (hereinafter referred to as “McKenna”). Applicants respectfully traverse this rejection for at least the following reasons.

Amended independent claim 1 recites “an apparatus comprising: a processor operable to initiate delivery of content through a first wireless network in response to a criterion being met by data derived from the a second wireless network, wherein the criterion is met when the data derived from the second wireless network exceeds a predetermined threshold value, and *wherein the threshold value corresponds to a number of active terminals* in a determined area.”

Lee is directed to a method and apparatus for remotely configuring a wireless communication device. Lee, at col. 6, lines 42-59, describes an audio system (i.e., AM/FM radio) that adapts to a user’s changing geographical location by automatically tuning to another station or recorded broadcast playing the same program or the same program type when a current broadcast program fades out. More specifically, Lee at col. 14, lines 46-59 discloses that if a playing station experiences a set amount of drift in relation to geographical location, that event will automatically trigger a request for a local station recalibration. Thus, at most, Lee describes basing operation on a (received signal) *quality* threshold. Lee fails to teach or suggest the triggering of the request for a local station recalibration based on the *number* of active audio systems (i.e., terminals) in a determined area. Thus, Lee does not teach or suggest the feature of a threshold value corresponding to a number of active terminals as recited in claim 1.

Notwithstanding whether Lee is properly combinable with McKenna, McKenna fails to cure the above noted deficiencies of Lee with respect to claim 1. McKenna at col. 22, line 55 –

col. 23, line 20 merely discloses a spatial-temporal content manager that defines a group of subscribers who populate a target audience for narrowcast transmissions. McKenna does not teach or suggest using the size of the target audience as a threshold by which to base a decision as to whether to transmit content. Instead, McKenna at col. 2, lines 31-38 allows for uninterrupted service despite a user roaming out of a narrowcast coverage area. For at least the foregoing reasons, the combination of Lee and McKenna, even if proper, would not have resulted in the claim 1 invention.

Independent claims 9, 18, 26, 29, 32, 33, 49, and 50 recite features similar to those discussed with respect to claim 1. As such, for at least similar reasons as those discussed, claims 9, 18, 26, 29, 32, 33, 49, and 50 are allowable over the asserted combination of Lee and McKenna and further in view of the additional novel and non-obvious features recited therein.

For example, amended independent claim 18 recites “a method comprising: monitoring user activity in a second network relative to a criterion and delivering content to a terminal of a first network when the criterion is met, wherein the criterion is met when data derived from the second network exceeds a predetermined threshold value, *wherein the data derived from the second network is comprised of a level of user activity within the second network*, and wherein the threshold value corresponds to a number of active terminals in a determined area.”

Lee fails to teach or suggest the features as recited in claim 18. More specifically, Lee does not teach or suggest deriving data from a second network comprised of the total level of user activity within the second network. Instead, Lee merely describes a system directed to ensuring that an individual user’s (listening) experience is enhanced by improving the quality of service rendered to that particular user. As discussed herein, Lee at col. 6, lines 42-59 demonstrates an audio system (i.e., AM/FM radio) that adapts to a user’s changing geographical location by automatically tuning to another station or recorded broadcast playing the same program or at least the same program type when a current broadcast program fades out. As such, Lee is directed to providing a user with continued service despite the user’s changing geographical location. There is no teaching or suggestion in Lee of deriving data from a second network, wherein the data comprises a level of user activity within the second network.

McKenna fails to cure the above noted deficiencies of Lee with respect to claim 18. McKenna at col. 14, line 60 – col. 15, line 37 describes a communiqué system wherein information is disseminated in response to external events, predetermined temporal/spatial

stimuli, or as a function of subscriber inquiries. At most, McKenna discloses providing information *in response to user requests*. In contrast to claim 18, McKenna fails to teach or suggest deriving data from a second network comprised of the *level of user activity* with the second network as recited in claim 18. For at least the foregoing reasons, the combination of Lee and McKenna, even if proper, would not have resulted in the invention of claim 18.

Dependent claims 2-4, 6-7, 10-13, 15-16, 19-21, 23-24, 27-28, 30-31, 34, 39-40, and 45-48 each depend from one of claims 1, 9, 18, 26, 29, 32, and 33 and are therefore allowable for at least the same reasons as their base independent claims and further in view of the novel and non-obvious features recited therein.

Claims 8, 17, and 25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of McKenna and further in view of U.S. Patent No. 6,904,264 to Frantz (hereinafter referred to as "Frantz"). Applicants respectfully traverse this rejection.

Dependent claims 8, 17, and 25 depend from claims 1, 9, and 18, respectively, and are therefore allowable over the asserted combination of Lee and McKenna for at least the reasons discussed above with respect to claims 1, 9, and 18. In addition, Frantz does not cure the above identified deficiencies of Lee and McKenna. For example, Frantz fails to teach or suggest the feature of a threshold value corresponding to a number of active terminals in a determined area. Frantz (Abstract) is merely directed to a method for enabling a user to download digital radio content. Frantz at col. 6, lines 34-56 describes a method wherein a user obtains access to download digital content based on whether the user has a subscription. Even so, a subscription does not constitute a threshold value corresponding to a number of active terminals in a determined area. As such, even if proper, the asserted combination of Lee, McKenna, and Frantz does not teach or suggest all of the features recited in claims 1, 9 and 18. Claims 1, 9 and 18 are thus allowable for at least these reasons. Claims 8, 17 and 25, dependent on claims 1, 9 and 18, respectively, are also allowable for at least the same reasons as their base independent claims and further in view of the novel and non-obvious features recited therein.

CONCLUSION

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. Should the Examiner find that a telephonic or personal interview would expedite passage to issue of the present application, the Examiner is encouraged to contact the undersigned attorney at the telephone number indicated below. If any additional required fees are or if an overpayment has been made the Commissioner is authorized to charge or credit Deposit Account No. 19-0733. Applicants look forward to passage to issue of the present application at the earliest convenience of the Office.

Respectfully submitted,
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